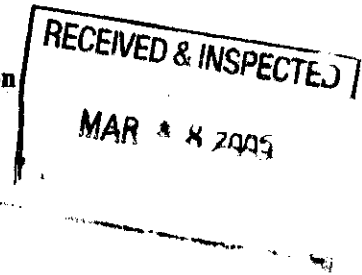


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

REPORT AND ORDER

Adopted: February 25, 2005

Released: March 17, 2005

By the Commission: Commissioners Abernathy, Copps, and Adelstein issuing separate statements;
Commissioner Martin approving in part, and dissenting in part.

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I. INTRODUCTION

1. This Report and Order addresses the minimum requirements for a telecommunications carrier to be designated as an “eligible telecommunications carrier” or “ETC,” and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In addition, as recommended by the Joint Board, we encourage states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, to adopt these requirements when deciding whether a common carrier should be designated as an ETC.² We believe that application of these additional requirements by the Commission and state commissions will allow for a more predictable ETC designation process.³

2. We also believe that because these requirements create a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund.⁴ Specifically, in considering whether a common carrier has satisfied its burden of proof necessary to obtain ETC designation, we require that the applicant: (1) provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and (5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. In addition, we make these additional requirements applicable on a prospective basis to all ETCs previously designated by the Commission, and we require these ETCs to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006, at the same time they submit their annual certification filing. As explained in greater detail below, however, we do not adopt the Joint Board’s recommendation to evaluate separately whether

¹47 U.S.C. § 214(e)(6). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission.

²47 U.S.C. § 214(e)(2). Section 214(e)(2) of the Act provides state commissions with the primary responsibility for designating ETCs.

³See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4258, para. 2 (2004) (*Recommended Decision*).

⁴See *id.*

ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because we conclude the objective of such criterion will be achieved through the other requirements adopted in this Report and Order.

3. In this Report and Order, we also set forth the analytical framework the Commission will use to determine whether the public interest would be served by an applicant's designation as an ETC. We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. Although the outcome of the Commission's section 214(e)(6) analysis may vary depending on whether the area is served by a rural or non-rural carrier, we clarify that the Commission's public interest examination for ETC designations will review many of the same factors for ETC designations in areas served by non-rural and rural incumbent LECs. In addition, as part of our public interest analysis, we will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. We also encourage states to apply the Commission's analysis in determining whether or not the public interest would be served by designating a carrier as an ETC.

4. In addition, we further strengthen the Commission's reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. An ETC, therefore, must submit, among other things, on an annual basis: (1) progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. We encourage states to require these reports to be filed by all ETCs over which they possess jurisdiction.

5. As explained below, we do not adopt the recommendation of the Joint Board to limit high-cost support to a single connection that provides access to the public telephone network. Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to "modify, amend, or change" its rules or regulations to implement this recommendation.⁵ Nevertheless, we believe the rigorous ETC designation requirements adopted above will ensure that only ETCs that can adequately provide universal service will receive ETC designation, thereby lessening fund growth attributable to the designation and supporting the long-term sustainability of the universal service fund.

6. We also agree with the Joint Board's recommendation that changes are not warranted in our rules concerning procedures for redefinition of service areas served by rural incumbent LECs. In addition, in this Report and Order, we grant several petitions for redefinition of rural incumbent LEC service areas. Moreover, we direct the Universal Service Administrative Company (USAC), in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary

⁵Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat 2809 (2004) (*2005 Consolidated Appropriations Act*). The prohibition against using any appropriated funds for adopting a primary line restriction expires September, 30, 2005. *See id.*

for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules. We also modify the Commission's annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date. This will allow high-cost support to be distributed as of the date of ETC designation. In addition, to enable price cap LECs and/or competitive ETCs that miss the June 30 annual interstate access support (IAS) certification deadline to receive IAS support, we modify the quarterly certification schedule for the receipt of IAS support. These carriers may file their certification after June 30 in order to receive IAS support in the second calendar quarter after the certification is filed. Finally, we decline to define mobile wireless customer location in terms of "place of primary use," as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.

II. BACKGROUND

A. The Act

7. Section 254(e) of the Communications Act of 1934, as amended (the Act),⁶ provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁷ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area either by using its own facilities or by using a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC), and must advertise these services throughout the designated service area.⁸

8. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.⁹ Under section 214(e)(2), "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier" for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁰ Section 214(e)(2) further states: "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."¹¹ Section 214(e)(6) provides that, "[i]n the case of a common carrier providing telephone exchange

⁶See 47 U.S.C. § 254(e). The Communications Act of 1934 was amended by the Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

⁷47 U.S.C. § 254(e).

⁸47 U.S.C. § 214(e)(1).

⁹47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

¹⁰47 U.S.C. § 214(e)(1).

¹¹47 U.S.C. § 214(e)(2).

service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request" perform the relevant ETC designation.¹²

B. Joint Board Recommended Decision

9. On June 28, 2002, the Commission released the *ETC Referral Order* requesting that the Joint Board "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled."¹³ Specifically, the Commission requested that the Joint Board make recommendations regarding two issues: (1) a long-term universal service plan that ensures that support is "specific, predictable, and sufficient to preserve and advance universal service;" and (2) the manner in which support can be "effectively targeted to rural carriers serving the highest cost areas, while protecting against excessive fund growth."¹⁴ Consistent with these directives, the Joint Board sought comment and held a public forum to address concerns regarding the designation and funding of ETCs in high-cost areas.¹⁵ On February 27, 2004, based on its review and consideration of the record developed in response to the *ETC Referral Order*, the Joint Board released the *Recommended Decision*, which made several recommendations to the Commission regarding the ETC designation process and the Commission's rules regarding high-cost support.¹⁶

¹²47 U.S.C. § 214(e)(6). See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice). The Commission requires that an ETC petition filed with the Commission contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution" and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission. In addition, similar to section 214(e)(2), section 214(e)(6) of the Act directs the Commission to determine whether designation of an ETC is "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 214(e)(6).

¹³See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (*Referral Order*). See also 47 U.S.C. § 553(b), which provides an exception to the notice and comment requirement for "rules of agency organization, procedure, or practice."

¹⁴See *Referral Order*, 17 FCC Rcd at 22642, at para. 1.

¹⁵On February 7, 2003, the Joint Board issued a Public Notice inviting public comment on whether the Commission's rules concerning high-cost support and the ETC designation process continue to fulfill their intended purposes. See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 1941 (2003) (*Joint Board Portability-ETC Public Notice*). On July 31, 2003, the Joint Board held an *en banc* hearing on the Commission's rules on designation and funding of ETCs in high-cost areas. See http://www.fcc.gov/wcb/universal_service/documents/030731.pdf. See also *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on the Portability of High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14486 (2003) (providing notice of Joint Board *en banc* hearing).

¹⁶*Recommended Decision*, 19 FCC Rcd at 4258-4260, paras. 1-4,

10. The Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214(e)(5) of the Act.¹⁷ The Joint Board concluded that permissive federal guidelines for minimum ETC qualifications would allow for a more predictable application process in the states. In doing so, the Joint Board concluded that permissive guidelines would also assist states in determining whether the public interest would be served by a carrier's designation as an ETC.¹⁸ The Joint Board further stated that permissive guidelines would improve the long-term sustainability of the universal service fund, ensuring that only fully qualified carriers that are capable of and committed to providing universal service would be able to receive support.¹⁹ The Joint Board further recommended that the Commission apply the guidelines as mandatory requirements to those proceedings in which the Commission acts under section 214(e)(6).²⁰

11. In order to curb growth of the fund due to the increasing number of ETC designations and the increased costs of rural incumbent LECs, the Joint Board also recommended that the Commission limit the scope of high-cost support to a single connection per household that provides access to the public telephone network in high-cost areas throughout the nation.²¹ The Joint Board determined that supporting a single connection would be more consistent with the goals of section 254 of the Act than the present system, which in some cases provides support for multiple connections to the public switched telephone network. The Joint Board determined that limiting the scope of support is necessary to preserve the sustainability of the universal service fund.²² The Joint Board also concluded that supporting a single connection would send more appropriate entry signals to carriers in rural and high-cost areas, and would be competitively neutral.²³ In conjunction with its proposal to limit high-cost support to a primary line, the Joint Board recommended that high-cost support be capped on a per-line basis and adjusted annually by an index factor in areas that are served by rural carriers and where a competitive carrier is designated as an ETC.²⁴ On December 8, 2004, however, Congress passed the 2005 Consolidated Appropriations Act, which prohibits the Commission from utilizing appropriated funds to "modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service payments."²⁵

12. The Joint Board declined to recommend that the Commission modify the basis of support (*i.e.*, the methodology used to calculate support) in study areas with multiple ETCs.²⁶ Instead, the Joint

¹⁷See 47 U.S.C. § 214.

¹⁸See *Recommended Decision*, 19 FCC Rcd at 4258, para. 2.

¹⁹See *Recommended Decision*, 19 FCC Rcd at 4261, para. 9.

²⁰See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

²¹See *Recommended Decision*, 19 FCC Rcd at 4258-4259, para. 3.

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵2005 Consolidated Appropriations Act at § 634.

²⁶See *Recommended Decision*, 19 FCC Rcd at 4259, para. 4.

Board recommended that the Joint Board and the Commission consider possible modifications to the basis of support as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.²⁷

13. On June 8, 2004, the Commission released a Notice of Proposed Rulemaking seeking comment on the proposals outlined in the Joint Board's *Recommended Decision* concerning the ETC designation process and the Commission's rules regarding high-cost universal service support.²⁸ In addition, the Commission sought comment on whether to modify its rules governing the filing of annual certifications and data submissions by ETCs.²⁹

C. Commission Decisions Pending the Commission's Action on the Joint Board's Recommendations

14. As the Commission and the Joint Board contemplated changes to the ETC designation process, the Commission acknowledged the need for a more thorough ETC designation framework. Specifically, on January 22, 2004, the Commission released the *Virginia Cellular ETC Designation Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia.³⁰ In that order, the Commission imposed reporting and other requirements on Virginia Cellular as conditions of Virginia Cellular obtaining an ETC designation. These conditions required Virginia Cellular: (1) to report annually on its progress toward achieving its build-out plans, the total number of unfulfilled service requests, and the total number of complaints per 1,000 households; (2) to comply with consumer protection and quality of service standards; (3) to provision service to requesting customers in the area for which Virginia Cellular is designated, including those areas outside existing network coverage; and (4) to construct new cell sites in areas outside Virginia Cellular's network coverage.³¹ The Commission also conducted a more thorough public interest analysis, which analyzed the advantages and disadvantages of designating Virginia Cellular as an ETC

²⁷*Id.* On August 16, 2004, the Joint Board issued a Public Notice that sought comment on issues related to the high-cost universal support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*. See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, FCC 04J-2, (rel. Aug. 16, 2004). Specifically, the Joint Board sought comment on three main issues: (1) whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs; (2) whether the Commission should amend the "rural telephone company" definition for high-cost universal service support to consider consolidating multiple study areas within a state; and (3) whether the Commission should retain or modify section 54.305 of its rules regarding the amount of universal service support for transferred exchanges. *Id.*

²⁸*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004) (*ETC Designation NPRM*).

²⁹See *ETC Designation NPRM*, 19 FCC Rcd at 10802, para. 5.

³⁰See *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563, para. 1 (2004) (*Virginia Cellular ETC Designation Order*).

³¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46.

and the potential for “creamskimming” that could result from Virginia Cellular’s ETC designation.³² The Commission further stated that the framework it established in the *Virginia Cellular ETC Designation Order* henceforth would apply to all ETC designations pending completion of this Report and Order.³³

15. Following the framework established in the *Virginia Cellular ETC Designation Order*, on April 12, 2004, the Commission released the *Highland Cellular ETC Designation Order*, which granted in part and denied in part the petition of Highland Cellular, Inc. to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.³⁴ In the *Highland Cellular ETC Designation Order*, the Commission concluded, among other things, that an ETC may not be designated below the wire center level served by a rural incumbent LEC.³⁵ The Wireline Competition Bureau and Wireless Telecommunications Bureau subsequently issued several ETC designation orders that follow the framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*.³⁶

III. SCOPE OF SUPPORT

16. On December 8, 2004, Congress passed the *2005 Consolidated Appropriations Act*, which includes a provision prohibiting the Commission from utilizing appropriated funds to “modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single

³²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1585-86, paras. 26-33. Creamskimming occurs when ETCs serve a disproportionate share of the low-cost, high revenue customers in a rural telephone company’s study area. See *id.* at 19 FCC Rcd at 1585, para. 32.

³³See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

³⁴See *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6438, para. 33 (2004) (*Highland Cellular ETC Designation Order*).

³⁵See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6438, para. 33.

³⁶See *Federal-State Joint Board on Universal Service; Guam Cellular and Paging Inc. d/b/a Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Islands of Saipan, Tinian, and Rota in the Commonwealth of the Northern Mariana Islands*, Order, CC Docket No. 96-45, 19 FCC Rcd 13872 (2004) (*Guam Cellular ETC Designation Order*); *Federal-State Joint Board on Universal Service; ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, North Carolina and Virginia*, Order, CC Docket No. 96-45, DA 04-3046 (2004) (*ALLTEL ETC Designation Order*); *Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia*, Order, CC Docket No. 96-45, 19 FCC Rcd 16530, (2004) (*Nextel Partners ETC Designation Order*); *Federal-State Joint Board on Universal Service; Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, Order, CC Docket No. 96-45, 19 FCC Rcd 20985 (2004) (*Advantage Cellular ETC Designation Order*); *Federal-State Joint Board on Universal Service; Sprint Corporation Applications for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, North Carolina, Tennessee, and Virginia*, Order, CC Docket No. 96-45, DA 04-3617 (2004) (*Sprint ETC Designation Order*); *Federal-State Joint Board on Universal Service; Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Georgia and Alabama*, Order, CC Docket No. 96-45, DA 05-259 (2005) (*PSC ETC Designation Order*).

connection or primary line restrictions on universal service support payments.³⁷ Accordingly, in this Report and Order, we do not consider the portion of the Joint Board's *Recommended Decision* related to limiting the scope of high-cost support to a single connection that provides access to the public telephone network.

IV. ETC DESIGNATION PROCESS

17. State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act.³⁸ A common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area.³⁹ The ETC must offer such services using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁴⁰ The ETC must also advertise the supported services and the associated charges throughout the service area for which designation is received, using media of general distribution.⁴¹ In addition, an ETC must advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.⁴² In this Report and Order, we adopt additional requirements consistent with section 214 of the Act that all ETC applicants must meet to be designated an ETC by this Commission.⁴³ Further, although specific requirements set forth in this Report and Order may be relevant only for wireless ETC applicants and some may be relevant for wireline ETC applicants, this ETC designation framework generally applies to any type of common carrier that seeks ETC designation before the Commission under section 214(e)(6) of the Act.⁴⁴

³⁷See 2005 Consolidated Appropriations Act at § 634. The prohibition against using any appropriated funds for adopting a primary line restriction expires September, 30, 2005. See *id.*

³⁸See 47 U.S.C. § 214(e)(1).

³⁹47 U.S.C. § 214(e)(1)(A). The services that are supported by the federal universal service support mechanisms are: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. See 47 C.F.R. § 54.101. While section 214(e)(1) requires an ETC to "offer" the services supported by the federal universal service support mechanisms, the Commission has determined that this does not require a competitive carrier to actually provide the supported services throughout the designated service area before designation as an ETC. *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-75, paras. 10-18 (2000), recon. pending (*Section 214(e) Declaratory Ruling*).

⁴⁰47 U.S.C. § 214(e)(1)(A). An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.101(a)(5).

⁴¹See 47 U.S.C. § 214(e)(1)(B).

⁴²47 C.F.R. §§ 54.405(b) and 54.411(d). Lifeline is a program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409. Link Up helps consumers with telephone installation costs. See 47 C.F.R. §§ 54.411-54.415.

⁴³See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

⁴⁴47 U.S.C. § 214(e)(6). Specifically, portions of this order discuss the ETC framework as it relates to wireless carriers because those are the common carriers that most frequently seek to be designated as ETCs before the Commission. See *infra* para. 37.

18. In addition, we set forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering. As part of our public interest analysis, we also will examine the potential for creamskimming in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC.

19. We encourage state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis outlined in this Report and Order. We further encourage state commissions to apply these requirements to all ETC applicants in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.⁴⁵

A. Eligibility Requirements

20. As described above, ETC applicants must meet statutorily prescribed requirements before we can approve their designation as an ETC.⁴⁶ Based on the record before us, we find that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.⁴⁷ As noted above, these requirements are mandatory for all ETCs designated by the Commission. ETCs designated by the Commission prior to this Report and Order will be required to make such showings when they submit their annual certification filing on October 1, 2006. We also encourage state commissions to apply these requirements to all ETC applicants over which they exercise jurisdiction. We do not believe that different ETCs should be subject to different obligations, going forward, because of when they happened to first obtain ETC designation from the Commission or the state. These are responsibilities associated with receiving universal service support that apply to all ETCs, regardless of the date of initial designation.

1. Commitment and Ability to Provide the Supported Services

21. We adopt the requirement that an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated service area: (1) by providing services to all requesting customers within its designated service area; and (2) by submitting a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage,

⁴⁵See 47 U.S.C. §§ 254(b)(3), (5). In addition to the universal service principles specified in the 1996 Act, Congress directed the Joint Board and the Commission to be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience, and necessity. See 47 U.S.C. § 254(b)(7). As recommended by the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. See *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801-04, paras. 45-52 (1997) (*First Universal Service Report and Order*). The Commission defines competitive neutrality as "universal service support mechanisms and rules that neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." See *id.*

⁴⁶See 47 U.S.C. § 214.

⁴⁷See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support. We encourage states to adopt these requirements and, as recommended by the Joint Board, to do so in a manner that is flexible with applicable state laws and policies. For example, states that adopt these requirements should determine, pursuant to state law, what constitutes a "reasonable request" for service.⁴⁸ In addition, we encourage states to follow the Joint Board's proposal that any build-out commitments adopted by states "be harmonized with any existing policies regarding line extensions and carrier of last resort obligations."⁴⁹

22. First, we agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service.⁵⁰ We conclude that this requirement, which we adopted in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, is appropriate as a general rule to ensure that all ETCs serve requesting customers in their designated service area. Therefore, consistent with these orders, we require that an ETC applicant make specific commitments to provide service to requesting customers in the service areas for which it is designated as an ETC.⁵¹ If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately.⁵² In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service;⁵³ or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.⁵⁴ We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.⁵⁵

23. Second, we require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service

⁴⁸See *Recommended Decision*, 19 FCC Rcd at 4268, para. 27.

⁴⁹See *id.*

⁵⁰See *Recommended Decision*, 19 FCC Rcd at 4266, para. 23. The Commission and state commissions will need to determine whether a particular request for service is "reasonable." We believe that requiring an ETC applicant to demonstrate its willingness and capability to provide service to all customers within the designated service area upon request will help determine whether a request is reasonable.

⁵¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1570-1571, para. 15; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6429-6430, para. 16.

⁵²*Id.*

⁵³*Id.*

⁵⁴See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1571, para. 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6430, para. 17.

⁵⁵See *infra* para. 69.

areas for which it seeks designation.⁵⁶ Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area.⁵⁷ The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation;⁵⁸ (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit coverage maps detailing the amount of high-cost support received for the past year, how these monies were used to improve its network, and specifically where signal strength, coverage, or capacity has been improved in each wire center in each service area for which funding was received.⁵⁹ In addition, an ETC applicant must submit on an annual basis a detailed explanation regarding why any targets established in its five-year improvement plan have not been met.

24. Some commenters assert that an applicant should submit more detailed build-out plans than discussed above,⁶⁰ while other commenters request that the build-out plans include a specific timeline, including start and completion dates.⁶¹ Our approach incorporates many commenters' suggestions; however, mandatory completion dates established by the Commission would not account for unique circumstances that may affect build-out, including the amount of universal service support or customer demand. On balance, we find that our approach allows consideration of fact-specific circumstances of the carrier and the designated service area, while ensuring that high-cost support will be used to improve service.

⁵⁶See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 1565, at para. 17.

⁵⁷Universal service support is not distributed for lines provided through resale of another carrier's services. In addition, it should be noted that lines provided by an ETC through resale of another carrier's services will not impact the universal service fund, since high-cost support is not disbursed to ETC lines provided in this manner. 47 C.F.R. § 54.307. See also *First Universal Service Report and Order*, FCC Rcd at 8933-8934, para. 290. Therefore, carriers who improve their networks through resale will have little or no impact on the universal service fund.

⁵⁸See *infra* para. 69. Carriers can achieve this improvement through several different methods, such as the construction of cell towers, leasing space on existing towers, or resale of other carriers' services.

⁵⁹See *infra* para. 69.

⁶⁰See Dobson Comments at 8, Iowa Board Reply Comments at 3, OPASTCO Comments at 33; NTCA Comments at 17, State and Rural Coalition Comments at 8, and State and Rural Coalition Reply Comments at 13-14.

⁶¹See Nebraska RICs Reply Comments at 9; NTCA Comments at 17.

2. Ability to Remain Functional in Emergency Situations

25. We adopt the Joint Board's recommendation that we require an ETC applicant to demonstrate its ability to remain functional in emergency situations.⁶² Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.⁶³ We believe that functionality during emergency situations is an important consideration for the public interest. Moreover, to ensure that ETCs continue to comply with this requirement, as discussed *infra*, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations.⁶⁴ Because most emergency situations are local in nature, we anticipate that state commissions that choose to adopt an emergency functionality requirement may also identify other geographically-specific factors that are relevant for consideration. If states impose any additional requirements, we encourage them to do so in a manner that is consistent with the universal service principle of competitive neutrality.⁶⁵

26. We also disagree with commenters that propose that the Commission adopt a specific benchmark requiring an ETC to maintain eight hours of back-up power and ability to reroute traffic to other cell sites in emergency situations.⁶⁶ We believe that such a benchmark is inappropriate because, although an ETC may have taken reasonable precautions to remain functional during an emergency, the extreme or unprecedented nature of the emergency may render the carrier inoperable despite any precautions taken, including battery back-up and plans to reroute traffic. Furthermore, we reject suggestions that ETCs should be required to publish signal strength for their primary digital technology because signal coverage, quality, or capacity will already be reported on an annual basis to the Commission as part of the five-year network improvement plan.⁶⁷

27. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit data concerning outages in its designated service areas on an annual basis.⁶⁸ In addition, to minimize the administrative burdens that may be associated with such reports,

⁶²See *Recommended Decision*, 19 FCC Rcd at 4269, para. 30; NTCA Comments at 8, State and Rural Coalition Comments at 10, Iowa Board Reply Comments at 3.

⁶³See NTCA Comments at 18, and OPASTCO Comments at 35.

⁶⁴See *infra* para. 69.

⁶⁵See *supra* para. 19; Dobson Comments at 11.

⁶⁶Commenters also contend that specific enforceable requirements should be adopted that require ETCs to provide an affidavit stating that they will remain functional in an emergency. We believe that an affidavit is unnecessary and redundant because as part of its application, an ETC must already demonstrate the ability to function in emergency situations. See OPASTCO Comments at 35.

⁶⁷See CenturyTel Comments at 9. See also *Recommended Decision*, 19 FCC Rcd 4281-82, para. 61.

⁶⁸See *infra* para. 69.

these reporting requirements are modeled after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*.⁶⁹

3. Consumer Protection

28. As recommended by the Joint Board, we require a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application before the Commission.⁷⁰ We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. Consistent with the designation framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission.⁷¹ We will consider the sufficiency of other commitments on a case-by-case basis.⁷² We believe that requiring an ETC applicant to demonstrate that it will comply with these consumer protection requirements is consistent with section 254 of the Act, and with related Commission orders that require policies that universal service serve "the public interest, convenience and necessity"⁷³ and ensure that consumers are able to receive an evolving level of universal service that "tak[es] into account advances in telecommunications, and information technologies and services."⁷⁴ In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.⁷⁵

29. We also believe that adopting state specific requirements as part of our ETC designation process might require the Commission to interpret state statutes and rules. An ETC applicant must commit to serve the entire service area and must provide five-year network improvement plans

⁶⁹See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rule Making, ET Docket No. 04-35, 19 FCC Rcd 16830 (2004) (*Outage Reporting Order*).

⁷⁰See *Recommended Decision*, 19 FCC Rcd at 4270, para. 31; NTCA Comments at 20, Oregon Commission Comments at 5 and Iowa Board Reply Comments at 3.

⁷¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576-77, para. 30; *Highland Cellular ETC Designation Order* FCC Rcd at 6433, para. 24. See also Dobson Comments at 12, and Dobson Reply Comments at 7-8. CTIA, Consumer Code for Wireless Service, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

⁷²For example, to the extent a wireline or wireless ETC applicant is subject to consumer protection obligations under state law, compliance with such laws may meet our requirement.

⁷³See 47 U.S.C. § 254(b)(7).

⁷⁴See 47 U.S.C. § 254(c).

⁷⁵*Id.*

addressing each wire center for which it expects to receive support.⁷⁶ We therefore conclude, given the consumer protection measures and other requirements adopted above and the provision in section 214(e)(4) of the Act that protects customers in the event that another ETC relinquishes designation, that it is unnecessary to impose additional obligations as a condition of granting ETC status to a competitive carrier.

30. As with the other requirements adopted in this Report and Order, state commissions that exercise jurisdiction over ETC designations may either follow the Commission's framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers. Several commenters argue that an ETC should be required to submit to the same state laws concerning consumer protection that the incumbent LEC must follow.⁷⁷ These include, for example, billing, collection, and mediation obligations. In determining whether any additional consumer protection requirement should apply as a prerequisite for obtaining ETC designation from the state – *i.e.*, where such a requirement would not otherwise apply to the ETC applicant – we encourage states to consider, among other things, the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC. We agree with the Joint Board's assertion that "states should not require regulatory parity for parity's sake."⁷⁸ We therefore encourage states that impose requirements on an ETC to do so only to the extent necessary to further universal service goals.

31. We also reject commenters' arguments that consumer protection requirements imposed on wireless carriers as a condition for ETC designation are necessarily inconsistent with section 332 of the Act.⁷⁹ While Section 332(c)(3) of the Act preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile radio services.⁸⁰ Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service.⁸¹

4. Local Usage

32. We adopt the Joint Board's recommendation that we establish a local usage requirement as a condition of receiving ETC designation.⁸² Specifically, we require an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation. As in past orders, however, we decline to adopt a specific local usage threshold.

⁷⁶See *supra* para. 23.

⁷⁷See CenturyTel Comments at 11, NASCUA Comments at 39, SBC Comments at 7, and USTA Comments at 10-11.

⁷⁸See *Recommended Decision*, 19 FCC Rcd at 4271, para. 34.

⁷⁹See Nextel Comments at 18.

⁸⁰See 47 U.S.C. § 332(c)(3).

⁸¹See 47 U.S.C. §§ 214, 254.

⁸²See *Recommended Decision*, 19 FCC Rcd at 4271, para. 35.

33. The Commission requires an ETC to provide local usage in order to receive universal service high-cost support.⁸³ In the *First Report and Order*, the Commission determined that an ETC should provide some minimum amount of local usage as part of its "basic service" package of supported services, but declined to specify the exact amount of local usage required.⁸⁴ We believe the Commission should review an ETC applicant's local usage plans on a case-by-case basis.⁸⁵ For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area.⁸⁶ We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers.⁸⁷ Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.

34. We encourage state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbent in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC.⁸⁸ In addition, although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.⁸⁹

5. Equal Access

35. The Joint Board recommended that the Commission adopt guidelines that would encourage states to require an ETC be prepared to provide equal access⁹⁰ if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(4) of the Act.⁹¹ Although we do not impose a

⁸³See 47 C.F.R. § 54.101(a)(2).

⁸⁴See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8812-14 (1997) (*First Universal Service Report and Order*). See 47 C.F.R. § 54.101(a)(2).

⁸⁵See *Recommended Decision*, 19 FCC Rcd at 4271-4272, para. 35-36; F. Williamson Comments at 31 (maintaining that wireless ETCs should be required to provide at least the average local usage utilized by the customers of the incumbent LEC in the designated service area).

⁸⁶In the *Highland Cellular ETC Designation Order* and the *Virginia Cellular ETC Designation Order*, the Commission found that Highland Cellular and Virginia Cellular customers were subjected to fewer toll charges than the customers using the incumbent's plan and that customers had a choice of a variety of local usage plans, many of which included a large volume of minutes. See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6433, para. 23; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576, para. 29.

⁸⁷See *Recommended Decision*, 19 FCC Rcd at 4272, para. 36.

⁸⁸See *Recommended Decision*, 19 FCC Rcd at 4271, para. 35.

⁸⁹See *Id.*

⁹⁰Equal access includes, among other things, the ability to access the presubscribed long distance carrier of the customer's choice by dialing 1+ the phone number. See *Definitions Order*, 18 FCC Rcd at 15092, para. 6.

⁹¹See *Recommended Decision*, 19 FCC Rcd at 4268, para. 28.

general equal access requirement on ETC applicants at this time, ETC applicants should acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area.⁹² Specifically, we find that if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement under the Act.⁹³ Accordingly, we will decide whether to impose any equal access requirements on a case-by-case basis.

36. Under section 214(e)(4) of the Act, if an ETC relinquishes its ETC designation, the Commission must examine whether the customers that are being served by the relinquishing carrier will be served by the remaining ETC or ETCs.⁹⁴ As part of that process, the Commission might also examine whether it is necessary to require the remaining ETC to provide equal access. Furthermore, under section 251(h)(2) of the Act, the Commission may treat another carrier as the incumbent LEC if that carrier occupies a position in the market that is comparable to the position occupied by the incumbent LEC, if such carrier has substantially replaced an incumbent LEC, and if such treatment is consistent with the public interest, convenience and necessity.⁹⁵ One obligation imposed on incumbent LECs is the requirement to offer equal access in connection with their wireline services.⁹⁶

6. Adequate Financial Resources

37. We decline to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area.⁹⁷ We believe that compliance with the existing requirements for ETC designation, along with the criteria adopted above, will require an ETC applicant to show that it has significant financial resources. Specifically, an applicant must demonstrate the ability to offer all the supported services in the designated area by submitting detailed commitments to build-out facilities, abide by service quality standards, and provide services throughout its designated service area upon request.⁹⁸ And in its annual

⁹²See *id.*

⁹³See, e.g., 47 U.S.C. §§ 214(e)(4), 332(c)(8), 252(h)(2).

⁹⁴47 U.S.C. § 214(e)(4). The statutory provision states that a state commission or, in the case of a common carrier not subject to state commission jurisdiction, the Commission "shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier." *Id.* The carrier seeking to relinquish its designation must give advance notice to the state commission or the Commission. *Id.* Prior to allowing the carrier to cease providing universal service in the area, the remaining ETC or ETCs will be required to ensure that all customers served by the relinquishing carrier will continue to be served. The remaining ETC or ETCs will be permitted up to one year from the approval of the request to relinquish ETC status to purchase facilities or equipment and complete construction to be able to serve the relinquishing carrier's customers. *Id.*

⁹⁵See 47 U.S.C. § 251(h)(2).

⁹⁶See 47 U.S.C. § 251(g) (preserving equal access obligations applicable to local exchange carriers prior to the 1996 Act). See also 47 U.S.C. §§ 3(26), 251(b)(3). Section 3(26) of the Act excludes CMRS providers from the definition of "local exchange carrier," "except to the extent that the Commission finds that such service should be included in the definition of such term." If the Commission were to make such a finding, section 251(b)(3) requires provision of dialing parity, which is a major component of equal access. 47 U.S.C. § 251(b)(3).

⁹⁷See *Recommended Decision*, 19 FCC Rcd at 4266, para. 22.

⁹⁸See *infra* paras. 21-23.

certification and reporting requirements, an ETC must demonstrate that it has used universal service support to provide quality service throughout the designated area. In addition, most wireless carriers, the largest group of competitive ETCs that the Commission designates, are already operating systems within their licensed market areas, thereby demonstrating in practice their ability to provide such services. Since 1994, moreover, wireless licensees have purchased their licenses at auction, which evinces that they have sufficient resources to provide service.⁹⁹ After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service.¹⁰⁰ Therefore, we find additional financial requirements are unwarranted to demonstrate that an ETC applicant is capable of sustaining operations and supported services.¹⁰¹

38. We further disagree with commenters that argue that an ETC should be required to demonstrate that it has the financial capability to sustain operations and supported services if an incumbent LEC relinquishes its designation.¹⁰² As discussed *infra*, section 214(e)(4) of the Act already contemplates safeguards for protecting customers served by an ETC that relinquishes its designation.¹⁰³

39. In sum, we do not believe that additional requirements concerning financial qualifications are necessary when determining whether to designate an ETC applicant. We believe that existing ETC obligations adequately ensure financial stability. In the event that state commissions do consider financial qualification factors in their ETC designations, we encourage them to do so in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.¹⁰⁴

⁹⁹See Dobson Comments at 7-8.

¹⁰⁰The specific requirements vary according to service. For example, 30 MHz broadband PCS licensees must provide adequate service to 1/3 of the population within five years of being licensed and 2/3 of the population within 10 years of licensing. See 47 C.F.R. § 24.203(a). In the cellular service, any areas not built out within five years of licensing become "unserved areas" that may be licensed to another applicant. See 47 C.F.R. §§ 22.911, 22.947, 22.949. In other services, licensees may satisfy construction requirements by offering "substantial service" in their licensed area. See, e.g., 47 C.F.R. §§ 24.203(b) (substantial service as alternative to specific build-out requirements for 10 MHz broadband PCS licensees), 90.685 (substantial service as alternative to specific build-out requirements for Economic Area Specialized Mobile Radio licensees); 27.14(a) (substantial service requirement for Wireless Communications Services licensees). Substantial service was established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas. See *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10785, 10843, at para. 111 (1997) (*WCS Report and Order*). In addition, the Commission considers whether a licensee offers substantial service in determining whether to grant a renewal expectancy. See, e.g., 47 C.F.R. §§ 22.940(a)(1) (cellular), 24.16 (PCS). The Commission has defined "substantial service" as "service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal." *Id.*

¹⁰¹See NTCA Comments at 16, and SBC Comments at 6-7. See also, WTA Comments, at 14 (WTA argues that prospective carriers seeking regulatory authorization have often employed "creative" methods for bolstering their financial representation).

¹⁰²See California Comments at 4, and USTA Comments at 8.

¹⁰³47 U.S.C. § 214(e)(4). See *infra* para. 36.

¹⁰⁴See *First Universal Service Report and Order*, 12 FCC Rcd at 8801-04, paras. 45-52.

B. Public Interest Determinations

40. Under section 214 of the Act, the Commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity.¹⁰⁵ The Commission also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act.¹⁰⁶ Congress did not establish specific criteria to be applied under the public interest tests in section 214 or section 254.¹⁰⁷ The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service;¹⁰⁸ ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates;¹⁰⁹ and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.¹¹⁰ Beyond the principles detailed in the Act, the Commission and state commissions have used additional factors to analyze whether the designation of an additional ETC is in the public interest.¹¹¹

41. In instances where the Commission has jurisdiction over an ETC applicant, the Commission in this Report and Order adopts the fact-specific public interest analysis it has developed in prior orders.¹¹² First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.¹¹³ Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission also will conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC

¹⁰⁵47 U.S.C. § 214(e)(2).

¹⁰⁶47 U.S.C. § 254(b)(7). Section 254 requires that support be distributed in a manner that is specific and predictable, and also requires that the Commission, in conjunction with the Joint Board, consider principles it determines "are necessary and appropriate for the protection of the public interest, convenience and necessity and are consistent with this Act." 47 U.S.C. §§ 254(b)(1), (7).

¹⁰⁷"Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest." 47 U.S.C. § 214(e)(2).

¹⁰⁸47 U.S.C. § 254(b).

¹⁰⁹47 U.S.C. § 254(b)(1).

¹¹⁰47 U.S.C. § 254(b)(3). See, e.g., Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418, PUC Docket No. 22289, SOAH Docket No. 473-00-1167, Order at 25 (Tex. Pub. Util. Comm'n Oct. 30, 2000).

¹¹¹For instance, the Alaska Commission considers the availability of new choices for customers; affordability; quality of service; service to unserved customers; comparison of benefits to public cost; and considerations of material harm. *Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Reg. Comm'n of Ala. Aug. 28, 2003).

¹¹²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574-81, paras. 26-39; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-38, paras. 20-35.

¹¹³See e.g., *Advantage Cellular ETC Designation Order*, at para. 18; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432, para. 22; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575-76, para. 28.

applicant does not seek designation.¹¹⁴ Based on this analysis, the Commission will deny designation if it concludes that the potential for creamskimming is contrary to the public interest.¹¹⁵ The Commission plans to use this analysis to review future ETC applications and strongly encourages state commissions to consider the same factors in their public interest reviews.

42. We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.¹¹⁶ In the *Virginia Cellular ETC Designation Order*, the Commission determined that merely showing that a requesting carrier in a non-rural study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance.¹¹⁷ We find the public interest concerns that exist for carriers seeking ETC designation in areas served by rural carriers also exist in study areas served by non-rural carriers. Accordingly, we find that many of the same factors should be considered in evaluating the public interest for both rural and non-rural designations, except that creamskimming effects will be analyzed only in rural study areas because the same potential for creamskimming does not exist in areas served by non-rural incumbent LECs.

43. We note that section 214 of the statute provides that, for areas served by a rural incumbent LEC, more than one ETC *may* be designated if doing so would serve the public interest.¹¹⁸ In addition, “[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [state Commission under section 214(e)(2) or Commission under section 214(e)(6)] shall find that the designation is in the public interest.”¹¹⁹ In contrast, section 214 provides that additional ETCs *shall* be designated in an area served by a non-rural incumbent LEC. Therefore, although we adopt one set of criteria for evaluating the public interest for ETC designations in rural and non-rural areas, in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending upon the area served. For example, the Commission and state commissions may give more weight to certain factors in the rural context than in

¹¹⁴See *Advantage Cellular ETC Designation Order* at para. 20; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹¹⁵See *Advantage Cellular ETC Designation Order* at 24; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1580, para. 35.

¹¹⁶While the *Virginia Cellular ETC Designation Order* analysis did not require that the ETC applicant meet the same public interest standard for both rural and non-rural study areas, it found that if the applicant met the public interest standard for the rural study areas, that would be sufficient to satisfy the public interest test for non-rural designations. It deferred to this proceeding the broader question of whether applicants must always satisfy the same public interest requirements for rural and non-rural study areas. *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575, para. 27. See also *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-32, para. 21.

¹¹⁷See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575, para. 27. See also *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-32, para. 21. Prior to these orders, the Wireline Competition Bureau found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complied with the statutory eligibility obligations of section 214(e)(1) of the Act. See, e.g., *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 39 (Com. Car. Bur. 2000).

¹¹⁸47 U.S.C. §§ 214(e)(2), (6).

¹¹⁹*Id.*

the non-rural context and the same or similar factors could result in divergent public interest determinations, depending on the specific characteristics of the proposed service area, or whether the area is served by a rural or non-rural carrier.

1. Cost-Benefit Analysis

44. We conclude that we will continue to consider and balance the factors listed below as part of our overall analysis regarding whether the designation of an ETC will serve the public interest. In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant.¹²⁰

- (1) Consumer Choice: The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis.¹²¹ In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas.¹²² The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.¹²³
- (2) Advantages and Disadvantages of Particular Service Offering: The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas,¹²⁴ the possibility that an ETC designation will allow customers to be subject to fewer toll charges,¹²⁵ and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services.¹²⁶ The Commission also examines disadvantages such as dropped call rates and poor coverage.¹²⁷

45. In addition, we believe that the requirements we have established in this Report and Order for becoming an ETC will help ensure that each ETC designation will serve the public interest. For

¹²⁰See *Advantage Cellular ETC Designation Order* at para. 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431, para. 20; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574, para. 26.

¹²¹See *Advantage Cellular ETC Designation Order* at para. 18; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6424, para. 4; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

¹²²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1569, para. 12.

¹²³See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6424, para. 4; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

¹²⁴See *Advantage Cellular ETC Designation Order* at para. 19; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432-33, para. 23; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1569, para. 12.

¹²⁵See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432-33, para. 23.

¹²⁶See *Advantage Cellular ETC Designation Order* at para. 19.

¹²⁷See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6433, para. 24; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576, para. 30.

example, the requirements to demonstrate compliance with a service quality improvement plan and to respond to any reasonable request for service will ensure designation of ETC applicants that are committed to using high-cost support to alleviate poor service quality in the ETC's service area.¹²⁸

46. We disagree with commenters who contend that we should adopt a more precise cost-benefit test for the purpose of making public interest determinations.¹²⁹ While we believe that a consideration of both benefits and costs is inherent in conducting a public interest analysis, we agree with the Joint Board's recommendation and decline to provide more specific guidance at this time on how this balancing should be performed.¹³⁰ The specific determination, and the relative weight of the relevant considerations, must be evaluated on a case-by-case basis.

47. We also reject the assertions of several commenters that a more stringent analysis is necessary to determine whether an ETC designation is in the public interest.¹³¹ These commenters argue that the current ETC application process is not rigorous enough to meet section 214(e)(2) of the Act and that ETC applicants should be required to demonstrate the public benefit they will confer as a result of the ETC designation.¹³² We believe that the factors set out in the *Virginia Cellular ETC Designation Order*, as expanded in this Report and Order, allow for an appropriate public interest determination.

2. Potential for Creamskimming Effects

48. As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the *Virginia Cellular ETC Designation Order* and the *Highland Cellular ETC Designation Order*.¹³³ As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission's will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.¹³⁴

¹²⁸See *supra* paras. 21-23.

¹²⁹See CenturyTel Comments at 11-12, GVNW Comments at 13, F. Williamson Comments at 18-20, ITTA Comments at 21-27, NASUCA Comments at 33-34.

¹³⁰See *Recommended Decision*, 19 FCC Rcd. at 4274, para. 42.

¹³¹CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

¹³²CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

¹³³In this Order, the term "service area" is used in reference to both study and service areas. The 1996 Act provided that the term "service area" means the company's "study area" in areas served by a rural telephone company. See 47 U.S.C. § 214(e)(5); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8791-92, para. 25 (1997).

¹³⁴47 U.S.C. § 214(e)(5). Section 54.207 of the Commission's rules, which implements section 214(e)(5) of the Communications Act of 1934, as amended, provides that a rural telephone company's study area will be its study area "unless and until the Commission and the states, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of study area for such company." 47 (continued....)

49. When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area.¹³⁵ The potential for creamskimming, however, arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an incumbent LEC's service area.¹³⁶ By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support.¹³⁷ Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The effects of creamskimming also would unfairly affect the incumbent LEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area while ETCs could target the rural incumbent LEC's customers in the lowest cost areas and also receive support for serving the customers in these areas.¹³⁸ In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the service area (e.g., at the wire center level).¹³⁹

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C.F.R. § 54.207(b). Among other things, the Joint Board recommended that the state commissions and the Commission consider and protect against the potential for creamskimming when contemplating a request to redefine a study area. See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 97, 179-80 para. 172 (1996) (1996 Recommended Decision). In *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, the Commission applied to certain study area redefinition petitions the creamskimming analysis the Commission uses to decide ETC applications. *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6440, para. 39; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹³⁵See *Advantage Cellular ETC Designation Order* at para. 20; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹³⁶See 1996 Recommended Decision, 12 FCC Rcd at 180, para. 172. The Commission recognizes that the type of service provided by a competitive ETC may force it to seek designation in a service area that is smaller than or different from the rural incumbent LEC's service area. For example, the Commission has recognized that the lowest cost portion of a rural service area may be the only portion of the service area that a wireless carrier is licensed to serve. See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 33; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6435, para. 27. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural service may have the same effects on the universal service fund and the rural incumbent LEC as creamskimming. Accordingly, the analysis should consider not whether the competitive ETC intends to creamskim, but whether the ETC applicant's proposed service area has the effect of creamskimming.

¹³⁷See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9454-55, para. 196, App. J (1997).

¹³⁸See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9399, para. 82 (1997).

¹³⁹See 47 C.F.R. § 54.315. As discussed *infra*, a rural incumbent LEC's wire center is the minimum geographic area for ETC designation. See *infra* paras. 77-78.

50. Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas.¹⁴⁰ For instance, the Commission found in the *Virginia Cellular ETC Designation Order* that designating a wireless carrier as an ETC in a particular service area was not in the public interest due to the disparity in density between the high-density wire center in the area that the applicant was proposing to serve and the wire centers within the service area that the wireless carrier was not proposing to serve.¹⁴¹ Even if a carrier seeks to serve both high and low density wire centers, the potential for creamskimming still exists if the vast majority of customers that the carrier is proposing to serve are located in the low-cost, high-density wire centers.¹⁴²

51. The Commission has also determined that creamskimming concerns may be lessened when a rural incumbent LEC has disaggregated support to the higher-cost portions of the incumbent's service area.¹⁴³ Specifically, under the Commission's rules, rural incumbent LECs are permitted to depart from service area averaging and instead disaggregate and target per-line high-cost support into geographic areas below the service area level.¹⁴⁴ By doing so, per-line support varies to reflect the cost of service in a particular geographic area, such as a wire center, within the service area.¹⁴⁵ By reducing per-line support in high density areas, disaggregation may create less incentive in certain circumstances for an ETC to enter only those areas.¹⁴⁶ Nevertheless, although disaggregation may alleviate some concerns regarding creamskimming by ETCs, because an incumbent's service area may include wire centers with widely disparate population densities, and therefore highly disparate cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities.¹⁴⁷ This problem may be compounded where the cost characteristics of the rural incumbent LEC and competitive ETC applicant differ substantially.¹⁴⁸ Thus, creamskimming may remain a concern where a competitive ETC seeks designation in a service area where the incumbent rural LEC has disaggregated high-cost support to the higher-cost portions of its service area.¹⁴⁹

¹⁴⁰See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578-79, para. 34.

¹⁴¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35. In that case, the highest-density study area had a population density of 273 persons per square mile, while the average population density of the remaining wire centers in the study area was about 33 persons per square mile. *Id.*

¹⁴²See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6436-37, para. 31.

¹⁴³See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁴See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11300, para. 137 (2001) (*Rural Task Force Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), recon. pending; 47 C.F.R. § 54.315.

¹⁴⁵See *id.*

¹⁴⁶*Virginia Cellular ETC Designation Order*, FCC Rcd at 1580, para. 35. See also TDS Comments at 12.

¹⁴⁷See *Recommended Decision*, 19 FCC Rcd at 4278-79, para. 54; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁸*Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁹See *id.*